IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

W.P. Nos. 6441 and 15625 of 2003

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WRIT PETITION NO : 6441 of 2003

Between:

A.M.Rathnam S/o Veerachary
R/o 2-98, M.R.Palli.,Tirupathi., Chittoor District.

..... PETITIONER

AND

1 Managing Director. A.P.State Financial Corporation.,
Chirag Ali Lane., Hyderabad.
2 Dy.General Manager.,HRD A.P.State Financial Corporation.,
Chirag Ali Lane., Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ or order or direction to the respondents more particularly one in the nature of Writ of Mandamus declaring the action of the respondents in retaining the 25% of V.R.S.Benefits of the petitioner as illegal, arbitrary, and violative of Art.14 and 21 of the constitution of India and consequently direct the respondents to release the 25% of VRS Benefits i.e.,Rs.3,05,000/- along with interest forthwith and to pass necessary order or orders as this Hon'ble court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner : MR.P.JAGADISH CHANDRA PRASAD

Counsel for the Respondents: MR.Y.N.LOHITA

WRIT PETITION NO : 15625 of 2003

Between:

A.M. Rathnam s/o Veerachary
R/o M.r. Palli, Tirupathi, Chittoor Dsitrict

..... PETITIONER

AND

1 The Managing Director, Andhra Pradesh State Financial Corporation, Chirag Ali lane, Hyderabad
2 The Dy. General manager- HRD, Andhra Pradesh State Financial Corporation, Chirag Ali Lane, Hyderbad
3 The General Manager & Enguiry Officer, Andhra Pradesh State Financial 5-9-194,Corporation, Chirag Ali Lane, Hyderabad

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, order or direction more particularly one in the nature of Writ of certiorari calling for the records relating to Ref. no. AFC/VIG/2003-04, 008436, Dt, 22nd July, 2003 issued by the 3rd respondent and quash the same as illegal, arbitrary and violative of Articles 14 & 21 of the Constitution of India and consequently grant stay of all further proceedings of the 3rd respondent and quash the same as illegal, arbitrary and violative of Arts, 14 & 21 of the Constitution of India and consequently grant stay of all further proceedigns of the 3rd respondent vide Ref no. AFC/VIG/2003-04. 008436, dt, July 22nd 2003 and to pass necessary order or orders as this Hon'ble court may deem fit.

Counsel for the Petitioner: MR.P.JAGADISH CHANDRA PRASAD

Counsel for the Respondents: Mr. Y.N. Lohitha

The Court made the following :

The Hon'ble Sri Justice

K.C. Bhanu

W.P. Nos. 6441 and 15625 of 2003

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COMMON ORDER:

W.P. 6441 of 2002 is filed by the petitioner – A.M. Rathnam – seeking a writ of Mandamus declaring the action of the respondents in retaining 25% of V.R.S. benefits of the petitioner as illegal and arbitrary. He also filed W.P. 15625 of 2003 seeking a writ of Certiorari calling for the records relating to Ref.No.AFC/VIG/2003-04, 008436 dated 22.7.2003 and to quash the same as illegal and arbitrary. Since common question is involved in both the writ petitions, they are being disposed of by a common order.

Brief facts that are necessary for the purpose of disposal of these cases are as follows:

FACTS IN W.P. 6441 of 2003:

The petitioner joined the respondent-Corporation on 18.12.1978 as Junior Legal Officer. He became Manager – Law w.e.f. 1.1.1988 and was working at Tirupathi Branch. Due to the Voluntary Retirement Scheme adopted by the respondent-Corporation, he has submitted option to retire from the respondent organization vide letter dated 13.5.2002 and asked for extension of the benefits attached to the said scheme. He was intimated vide proceedings of the 2nd respondent dated 16.5.2002 that his application for opting V.R.S. was accepted by the committee and that the ex gratia and the terminal benefits will be settled in due course as per the existing Rules and subsequently vide office order No.8 dated 20.6.2002 he was relieved of his duties. As the respondent-corporation did not settle his V.R.S.

benefits, he made two letters dated 26.7.2002 and 16.8.2002. The respondent-corporation paid him Rs.11,93,103-00ps. towards part payment vide letter dated 20.8.2002 and retained 25% i.e. 3,05,000/- on the ground that the matter pertaining to M/s. Sai Krishna Granites, Tirupathi, M/s. Shiridi Sai Constructions and certain cases referred to Corporation internal vigilance department are pending and that the amount so retained will be released after conclusion and outcome of the said enquiry. The petitioner states that as on the date of his retirement there was neither any enquiry pending against him nor he was connected with any such enquiry and even as on the date of his V.R.S. there was no notice pertaining to any enquiry and hence withholding of Rs.3,05,000/- is illegal and arbitrary. Hence the present writ petition.

The respondents 1 and 2 filed counter affidavit admitting that the petitioner had opted for Voluntary Retirement Scheme and that the respondent-corporation accepted the same. It is further stated that during the settlement of terminal benefits they received complaint that the petitioner along with the other officials of the corporation had proceeded to accept Government lands and fake securities by way of collateral securities in respect of the loans sanctioned and disbursed by the respondent-corporation and hence the matter was referred to Vigilance Department and therefore the respondent-Corporation decided to retain Rs.3,05,000/- being 25% of the terminal benefits due to the petitioner awaiting the completion of the enquiry. The petitioner is one of the crucial officer involved in the transactions along with the other officials of the corporation. The Vigilance Department upon conducting inspection found that grave irregularities are committed by the petitioner in respect of release of

term loans in favour of several firms and due to the said irregularities the respondent-corporation could not realize the outstanding amounts due in the accounts by realizing the securities offered by the borrowers. The respondent-corporation on careful examination of the allegations and findings of the Vigilance Department decided to release 75% of the amounts under terminal benefits and retain 25% till the conclusion of the detailed enquiry and accordingly called for explanation from all the delinquent officers vide letter dated 7.12.2002. The petitioner upon receiving the letters issued by the corporation sought for extension of time and thereafter submitted his explanation. The petitioner having subjected himself to the enquiry proposed and submitted his explanation, is ill-advised in seeking to approach this court and hence the writ petition is liable to be dismissed.

FACTS IN W.P. 15625 of 2003:

The facts with regard to the petitioner joining the service, opting for Voluntary Retirement Scheme etc. are the same as stated in W.P. 6441 of 2003 and hence they are not repeated. It is further stated in this writ petition that when the respondent-management had not released the Voluntary Retirement Scheme benefits, he questioned the same by way of W.P. 6441 of 2003 and this court had granted interim order on 1.5.2003 in WPMP 8399 of 2003 in W.P. 6441 of 2003. Aggrieved by the same, respondents 1 and 2 filed W.A. 907 of 2003 and this court allowed the same on the ground that the interim relief and the main relief are one and the same and directing the office to post the writ petition for final hearing. Pending this, the respondents had issued the present impugned notice dated

22.7.2003 directing him to appear before respondent No.3 on 29.7.2003. The said notice issued under APSFC Regulation 41(4) is without jurisdiction. The said Regulation is applicable only to the employees who are at present on the rolls and therefore the notice issued by the respondent-corporation after accepting and relieving him from the corporation is illegal and arbitrary. Hence the present writ petition.

The counter averments in this writ petition are almost akin to the one stated in W.P. 6441 of 2003 and hence it is redundant to repeat the same.

Learned counsel for the petitioner contended that Staff Regulations 1960, under which a regular departmental enquiry is initiated, has no application in view of the fact that the petitioner has retired from service w.e.f. 20.6.2002 after the respondents have accepted the Voluntary Retirement Scheme opted by the petitioner and therefore initiation of departmental proceedings is contrary to the service rules and hence he prays to allow the writ petitions.

On the other hand, learned standing counsel appearing for the respondents contended that after retirement when a show-cause notice was given for certain irregularities, the petitioner gave an explanation dated 31.12.2002 and having submitted the explanation he is bound to appear in the enquiry and that in case of penalty, recovery from the pay can be ordered as per the Regulations and hence he prays to dismiss the writ petition.

The short point for consideration in these two writ petitions is whether the respondents are entitled to retain 25% of the

V.R.S. benefits payable to the petitioner pending departmental enquiry and whether the petitioner has to attend departmental enquiry after retirement?

The petitioner joined in the respondent-corporation on 18.12.1978 as a Junior Legal Officer. In the year 1988 he became the Manager, Law. When the respondent-corporation introduced the Voluntary Retirement Scheme, in the month of May 2002 the petitioner gave his willingness to opt for Voluntary Retirement Scheme. Vide proceedings dated 16.5.2002, the 2nd respondent intimated that the application of the petitioner for V.R.S. was accepted by the committee and thereafter he was relieved from duties w.e.f. 20.6.2002. On 7.12.2002 the respondent-corporation called for an explanation for certain alleged irregularities for which he gave explanation dated 13.1.1003. Thereafter, vide proceedings dated 16.7.2003 the respondent-corporation decided to order departmental enquiry to further enquire into the matter in respect of the charges framed against the petitioner and some others. As seen from the letter of the respondent-corporation dated 16.5.2002, the application of the petitioner for opting Voluntary Retirement Scheme was accepted by the committee on HRD matters on 13.5.2002 and it is stated that the ex-gratia and terminal benefits under the Voluntary Retirement Scheme will be settled in due course of time as per rules.

The power of the disciplinary control is a necessary concomitant of employer-employee relationship. The disciplinary control of employer continues till such time as the employee is under his employment. Once that relationship is snapped, the power of

disciplinary control also comes to an end, unless there are rules to the contrary. Once the relationship of master and servant had come to an end by termination or accepting the Voluntary Retirement Scheme or superannuation, no disciplinary action could be taken in respect of any misconduct relatable to the period in which the petitioner is in service.

The A.P. State Financial Corporation Staff Regulations, 1960 (for short, 'Staff Regulations') govern the terms and conditions of appointment and service of the staff of A.P. State Financial Corporation. Regulation 41 provides for imposition of penalties. As a matter of fact, the respondents issued a show-cause notice dated 7.12.2002 calling upon the petitioner to explain within 15 days why appropriate disciplinary action under Staff Regulation No. 41(1) of the Staff Regulations shall not be initiated against him for certain irregularities and lapses on his part. Regulation 41(1) reads as follows:

> "Without prejudice to the provisions of other Regulations, an employee who commits a breach of the Rules or Regulations of the Corporation or who displays negligence, inefficiency or indolence, or who knowingly does anything detrimental to the interests or prestige of the Corporation or in conflict with its instructions, or who commits a breach of discipline or is guilty of any other act of misconduct or misbehaviour, shall be liable to the following penalties:
>
> a. reprimand;
>
> b. delay or stoppage of increments or promotion;
>
> c. degradation to a lower post or grade or to a lower stage in his incremental scale;

d. recovery from Pay of the whole or part of any pecuniary loss caused to the Corporation by the employee;

e. dismissal

A perusal of the above provision makes it clear that the said Regulation applies only to an employee who commits breach of the rules and regulations of the Corporation. As per Regulation 2(1) of the Staff Regulations, the Regulations shall apply to whole-time employee of the Corporation. The word “employee” in Regulations 2(1)(a) and 41(1) indicate about the relationship of master and servant which is in existence. Once the relationship is snapped, he is no more an employee of the Corporation. Snapping may be after superannuation or removal or accepting the Voluntary Retirement Scheme. After 20.6.2002 the petitioner ceased to be an employee of the Corporation because his application for V.R.S. has been accepted and he was relieved from his duties. As a matter of fact, the same plea has been taken by the petitioner even in the explanation given by him on 13.1.2003 to the effect that he ceased to be an employee of the Corporation w.e.f. 20.6.2002 and the provisions contained in Regulation 41(1) of the Staff Regulations are not at all applicable to him and it is only applicable in case of employees of the Corporation and hence no action can lie against him under the said Regulation. If the Regulations provide for initiation of departmental proceedings or recovery of loss caused to the Corporation, then there may not be any bar for initiation of the departmental proceedings. There is no regulation in the Staff Regulations, 1960 which is applicable to the employees of the Corporation for initiation of

disciplinary enquiry or withholding of any amount after a person ceased to be an employee of the Corporation. Simply because the petitioner gave an explanation to the show-cause notice, that does not confer any right on the Corporation to continue the departmental proceedings or initiate the departmental proceedings after retirement or after the petitioner ceased to be an employee of the Corporation in the absence of any specific rule or regulation governing the service conditions of the employee to that effect. No regulation or rule is brought to the notice of this court by the respondents to show that the disciplinary enquiry can be initiated after retirement or after accepting the Voluntary Retirement Scheme or when a person ceased to be an employee of the Corporation. Therefore, the respondents cannot withhold 25% benefits of the petitioner for opting Voluntary Retirement Scheme and it is an arbitrary and illegal action. So also, the petitioner cannot be summoned to appear in the departmental proceedings. No doubt, the petitioner has not challenged the departmental proceedings itself, but, at the same time, in the absence of any rule for initiation of departmental proceedings after retirement, a person cannot be summoned to appear before the Enquiry Officer. Therefore, the contentions raised by the learned counsel for the respondents are not sustainable in the absence of any specific rules and regulations for initiation of departmental enquiry after a person ceased to be an employee of the corporation. Hence, the writ petitions are required to be allowed.

In the result, the writ petitions are allowed. In the circumstances, there shall be no order as to costs. However, this order will not preclude the respondent-Corporation in taking appropriate action for the alleged loss caused to the respondent-

Corporation before appropriate Forum. All the remedies available to the respondent-Corporation under the law are left open.

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K.C. Bhanu, J.

Date: --06—2005.

MVB.

Rule nisi is made absolute as above.

Witness the Hon'ble Sri Bilal Nazki, the Acting Chief Justice on this the Friday, the Tenth day of June, Two thousand and Five.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Managing Director, Andhra Pradesh State Financial Corporation, Chirag Ali lane, Hyderabad
2 The Dy. General manager- HRD, Andhra Pradesh State Financial Corporation, Chirag Ali Lane, Hyderbad
3 The General Manager & Enguiry Officer, Andhra Pradesh State Financial 5-9-194,Corporation, Chirag Ali Lane, Hyderabad

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